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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES BANKRUPTCY COURT
WESTERN DIVISION

FILED *jd*

FEB 06 1998

In re:

VICTOR WILLIAMS, JR.,

Debtor.

Case No. 95-33606-L

Chapter 13

JED G. WEINTRAUB
CLERK OF COURT
WESTERN DISTRICT OF TENN.

**MEMORANDUM OPINION AND ORDER ON
MOTION TO INCLUDE CHILD SUPPORT IN CHAPTER 13 PLAN**

Before the court are the Motion to Include Child Support in Chapter 13 Plan filed by the Child Support Bureau of the Juvenile Court of Memphis Shelby County, Tennessee (hereinafter "the Juvenile Court") and the Answer filed by the debtor, Victor Williams, Jr. The Juvenile Court seeks to add Debbie Ray to the debtor's Chapter 13 plan in order that she might receive the child support legally due her for the support of the debtor's minor child. The debtor acknowledges that Debbie Ray should receive the support payments already designated in his plan but also seeks to have the Juvenile Court refund to Debbie Ray the money it erroneously applied to another account. Through a series of admitted errors on the part of the Juvenile Court and the Chapter 13 Trustee's Office, payments which should have been applied to the Ray account to pay ongoing child support obligations were applied to the account of Brenda Saulsberry to whom an arrearage, but not ongoing support payments, is owed. Based on the following findings of fact and conclusions of law in this contested matter, **FED. R. BANKR. P. 9014**, the Court grants Juvenile Court's motion with modifications. This is a core proceeding. 28 U.S.C. § 157(b)(2).

I. FACTS

The following are the undisputed facts. The debtor previously had been adjudicated to be the father of LaKesha Ray Williams, daughter of Debbie Ray, and Nicole Jennings, daughter of Brenda Saulsberry. He had support obligations in regard to both daughters, but only LaKesha was a minor at the time the debtor filed a voluntary bankruptcy petition on November 15, 1995. In his

schedules, the debtor listed "Juvenile Court/Debbie Ray" as a priority creditor. The Juvenile Court, which was represented at the first meeting of creditors, filed two proofs of claim, dated January 12, 1996. One was for Debbie Ray, Acct. # 83 1723 1, for current child support in the monthly sum of \$130.00. The other proof of claim was for Brenda Saulsberry, Acct. # 83 17232, for *current child support* in the monthly amount of \$91 .00. At the hearing on the instant motion, counsel for Juvenile Court admitted that it had filed the Saulsberry claim in error since no current child support was owing on that account, only an arrearage. No proof of claim was filed for this arrearage, however, prior to the bar date of April 8, 1996. Thus, the string of errors began. The next error occurred when a clerk in the Chapter 13 Trustee's Office took the handwritten plan sheet from the meeting of creditors which indicated a Juvenile Court priority claim, upon oral amendment at creditors' meeting on March 1, 1996, of \$91 .00 per month and matched it up with the only Juvenile Court claim equaling \$91 .00 per month, namely that of Brenda Saulsberry. The Trustee's Office subsequently marked Debbie Ray's proof of claim "deleted" since there was already an ongoing Juvenile Court payment. Due to this error, the Trustee's Office disbursed the initial \$91.00 payment to Juvenile Court with the notation that the funds be credited to Acct. # 8317232, the Saulsberry account. Juvenile Court then sent this money to Brenda Saulsberry. This pattern of payment has continued, and a total of \$1,820.00 has been paid out to Brenda Saulsberry.

The debtor, according to his undisputed testimony, went immediately to Juvenile Court after the first erroneous payment and apprized them of the problem. The debtor went several times thereafter to Juvenile Court to see what could be done to rectify the errors and have the \$91 .00 disbursed properly. He even contacted Debbie Ray to have her talk to personnel at Juvenile Court. All efforts were to no avail.

In an attempt to “redirect” the \$91.00 per month to Debbie Ray, counsel for the Juvenile Court filed *an amended* proof of claim for her. The Trustee’s Office marked this “deleted” as well. Juvenile Court filed its Motion to Include Child Support on September 10, 1997. Counsel for Juvenile Court stated at the hearing that his offer to the debtor was to delete Saulsberry from the plan, let the money that was paid to her go towards reducing the **arrearage** owed her, and redirect the \$91.00 per month to Debbie Ray. The debtor agrees that he wants the \$91.00 per month to go to Debbie Ray, but he also wants the Juvenile Court to remit to her the \$1,820.00 it applied to the wrong account.

II. ANALYSIS

Because the debtor does not contest that he owes ongoing child support to Ray, this Court grants Juvenile Court’s motion to include child support in the debtor’s chapter 13 plan. The Court, however, must take measures to correct the problems that have resulted from the admitted errors made by both the Trustee’s Office and Juvenile Court.

This is an unusual case. The debtor, who is disabled and lives on Supplemental Security Income, sought to make provision in his Chapter 13 plan for ongoing child support payments for his minor daughter. When the debtor saw that the allocated payments were not going for the support of this daughter, he took immediate steps to bring this error to the attention of Juvenile Court personnel. Despite his repeated efforts, the erroneous payments continued to flow out. Both the counsel for Juvenile Court and the Chapter 13 Trustee acknowledge errors were made by their staffs resulting in child support payments being paid out to the wrong person. The question to be answered is who will ultimately bear the burden of these errors?

Section 105 of Title 11 grants the Bankruptcy Court broad equitable powers to “carry out the provisions of this title.” 11 U.S.C. § 105(a). The goal of the Court in this situation is to rectify, to the extent possible, the errors made by the Trustee’s Office and Juvenile Court.

Clearly Juvenile Court made a mistake when it filed the erroneous proof of claim for Saulsberry. Had Juvenile Court properly indicated that this claim was for an arrearage, rather than ongoing child support, the Trustee’s Office would have been less likely to delete one of the claims. The Court will not require Ms. Saulsberry to refund any of the money she received from Juvenile Court. The debtor clearly owed this money to her on the arrearage claim. However, the offer by the Juvenile Court to delete Saulsberry from the plan is not plausible as the debtor still owes additional arrearage to Saulsberry. As a result, Juvenile Court is ordered to file a proof of claim for the Saulsberry account so that the Trustee may begin making proper disbursements for that claim.

Juvenile Court filed a proper proof of claim on the Ray account; however, the Trustee’s Office improperly deleted this claim. Thus, Ray has not received any ongoing child support payments. The Chapter 13 Trustee is a fiduciary of each creditor of the debtor’s estate and is accountable for all property received into the estate. See *Nash v. Kester* (*In re Nash*), 765 F.2d 14 10, 1415 (9th Cir. 1985); *Hall v. Perry* (*In re Cochise College Park, Inc.*), 703 F.2d 1339, 1357 (9th Cir. 1983); 9 COLLIERON BANKRUPTCY ¶ 1302.03[1][a] (Lawrence P. King ed., 15th ed. rev. 1997). As such the Trustee has a duty of “an ordinarily prudent man” to see that all monies paid into the plan by the debtor are properly disbursed. *Ford Motor Credit Co. v. Weaver*, 680 F.2d 45 1, 461-62 (6th Cir. 1982) (quoting *In re Johnson*, 5 18 F.2d 246,251 (10th Cir. 1977)). Had the Trustee’s Office not deleted this claim, Ray would have been receiving ongoing child support payments. Thus, the

Trustee's Office should bear the burden for the first erroneous payment made to Saulsberry. As a result, the Court orders the Trustee's office to disburse \$91.00 to Ray.

Juvenile Court, however, is not without blame either. According to the undisputed testimony of the debtor, upon learning of the erroneous disbursement, he immediately informed Juvenile Court and asked that it take the necessary measures to correct the problem. Juvenile Court took ineffective action to correct the problem. As a result, the Trustee continued to disburse \$91.00 per month to Juvenile Court, who in turn disbursed the money to Saulsberry rather than Ray. The clerk of Juvenile Court has a duty to faithfully discharge the duties of his office. See TENN. CODE ANN. 18-2-201(a). Additionally, the clerk is to be held financially accountable for payments made into and disbursed from its child support collection system. See TENN. CODE ANN. 18-1-108(b). Because Juvenile Court was aware of the mistake and failed to rectify the problem, this Court orders Juvenile Court to pay Ray \$1,729.00.

The Court recognizes that ordering the Trustee's office to pay \$91 .00 and Juvenile Court to pay \$1,729.00 to Ray without providing them with the opportunity to file proofs of claim for these amounts would give the debtor a windfall, a result that is not favorable to this Court as the debtor owed this money to Ray and Saulsberry. As a result, the Court will allow the Trustee's office and Juvenile Court to file proofs of claim for \$91 .00 and \$1,720.00 respectively; however, these claims will be classified as general unsecured claims and will not be given priority status as they are no longer payments for support of his children. Additionally, Juvenile Court shall file a proof of claim for the ongoing support payments owing on the Ray account, taking into consideration the \$1,820.00 she will receive from the Trustee's Office and Juvenile Court, and an amended proof of claim for the arrearage remaining on the Saulsberry account.

III. ORDER


Based upon the foregoing, it is accordingly ORDERED that:

- (1) Juvenile Court's motion to add ongoing child support in the debtor's Chapter 13 plan is granted;
- (2) The Trustee's office shall pay Ray \$9 1 .00 and may file a proof of claim for that amount to be classified as a general unsecured claim;
- (3) Juvenile Court shall pay Ray \$1,729.00 and may file a proof of claim for that amount to be classified as a general unsecured claim;
- (4) Juvenile Court shall file corrected proofs of claim for the Ray account and the Saulsberry account.
- (5) The Trustee shall adjust the debtor's payments accordingly.

IT IS SO ORDERED.

☐ Motion ☒ Order ☐ Other
☒ Entered on the Court docket on Feb 6 1998 and mailed to:
☒ Debtor(s), Debtor(s) Attorney, Trustee
☒ Servicing by Court
☐ Certificate of Mailing to Matrix
☐ For servicing by Movant
☐ _____
By: D. Dandridge, Deputy Clerk

BY THE COURT,


JENNIE D. LATTA
United States Bankruptcy Judge

Date: 2-6-98

cc: Victor Williams, Jr.
1391 Grand Opera Cove
Memphis, Tennessee 38 106

Richard L. DeSaussure
Assistant District Attorney General
6 16 Adams Ave.
Memphis, Tennessee 38 103

George W. Stevenson
Chapter 13 Trustee
200 Jefferson Avenue, #1113
Memphis, Tennessee 38 103

Mailed on 2-6-98 to:
☐ Debtor, debtor's attorney and trustee
☒ parties listed above
Sandy Beck, Administrative Secretary
United States Bankruptcy Court